

5:07-CT-3153-FL

JOINT STATUS REPORT

and 16, *Robinson, et al. v. Perry, et al.*, 5:15-CT-3008-D. On 27 February 2015, Defendants filed a response to the motion to remand. *See* D.E. 19, *Robinson, et al. v. Perry, et al.*, 5:15-CT-3008-D. On 25 June 2015, the Court granted Plaintiffs' motion to remand the action back to the Wake County Superior Court in its entirety. *See* D.E. 23, *Robinson, et al. v. Perry, et al.*, 5:15-CT-3008-D.

In state court, the parties continue to anticipate that any non-facial constitutional challenges will be heard by the presiding superior court judge, and any facial constitutional challenges to North Carolina statutes, which were predicated exclusively upon the North Carolina Constitution and North Carolina law, will be resolved separately under three-judge panel procedures recently adopted by the North Carolina General Assembly. *See* S.L. 2014-100, § 18B.16.

With regard to the Racial Justice Act (RJA), it remains the case that the Plaintiffs in this suit have motions pending in state court pursuant to both the original version of the RJA, S.L. 2009-464, as well as the amended version, S.L. 2012-136. Plaintiffs continue to anticipate that the next stage in their RJA cases will involve litigation over the question of whether the repeal bill, S.L. 2013-154, § 5, may be retroactively applied to death row inmates who investigated and properly filed RJA motions. There remain pending before the North Carolina Supreme Court two cases which are expected to address questions of law under the RJA. Both cases were argued before the court on April 14, 2014 and are ripe for decision. *See State v. Marcus Robinson*, No. 411A94-5; *State v. Augustine, Golphin, and Walters*, No. 139PA13. The parties do not know when litigation of Plaintiffs' RJA motions will conclude.

The parties do not expect any execution dates to be set for Plaintiffs until after the resolution of RJA litigation and the conclusion of any pending litigation regarding lethal

injection either in state court or this case. Accordingly, subject to the Court's approval, the parties agree that it is appropriate for these proceedings to remain in abeyance.

Respectfully submitted this the 21st day of September, 2015.

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CERTIFICATE OF SERVICE

I certify that, on 21 September 2015, I electronically filed the foregoing Joint Status Report with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to the counsel of record for the Defendants, the N.C. Department of Justice, Special Deputy Attorney General Joseph Finarelli, at jfinarelli@ncdoj.gov.

This the 21st day of September, 2015.

/s/ David Weiss
David Weiss
Counsel for Plaintiffs